

**DOTD ARCHITECTURAL PROCEDURES MANUAL**

**ADAPTED FROM**

**FPC LOUISIANA CAPITAL IMPROVEMENT  
PROJECTS PROCEDURE MANUAL FOR  
DESIGN AND CONSTRUCTION**

**February 5, 2004**

**DOTD ARCHITECTURAL PROCEDURES MANUAL**

<b>ARTICLE 1.</b>	<b>CONDITIONS OF THE CONTRACT</b>
<b>ARTICLE 2.</b>	<b>DEFINITIONS</b>
<b>ARTICLE 3.</b>	<b>DOTD-USER AGENCY RESPONSIBILITIES</b>
<b>ARTICLE 4.</b>	<b>CONSTRUCTION BUDGET (AFC)</b>
<b>ARTICLE 5.</b>	<b>COMPENSATION</b>
<b>ARTICLE 6.</b>	<b>PAYMENTS TO THE DESIGNER</b>
<b>ARTICLE 7.</b>	<b>DESIGNER'S SERVICES</b>
<b>ARTICLE 8.</b>	<b>CONTRACT CHANGES</b>
<b>ARTICLE 9.</b>	<b>OWNERSHIP OF DOCUMENTS</b>
<b>ARTICLE 10.</b>	<b>DELAYS AND EXTENSIONS</b>
<b>ARTICLE 11.</b>	<b>PROSECUTION OF WORK</b>
<b>ARTICLE 12.</b>	<b>TERMINATION OR SUSPENSION</b>
<b>ARTICLE 13.</b>	<b>INSURANCE REQUIREMENTS</b>
<b>ARTICLE 14.</b>	<b>INDEMNITY</b>
<b>ARTICLE 15.</b>	<b>ERRORS AND OMISSIONS</b>
<b>ARTICLE 16.</b>	<b>CLAIMS FOR LIENS</b>
<b>ARTICLE 17.</b>	<b>COMPLIANCE WITH LAWS</b>
<b>ARTICLE 18.</b>	<b>COMPLIANCE WITH CIVIL RIGHTS</b>
<b>ARTICLE 19.</b>	<b>DISPUTES</b>
<b>ARTICLE 20.</b>	<b>PROGRESS INSPECTIONS</b>
<b>ARTICLE 21.</b>	<b>COVENANT AGAINST CONTINGENT FEES</b>

<b>ARTICLE 22.</b>	<b>SUBLETTING, ASSIGNMENT, OR TRANSFER</b>
<b>ARTICLE 23.</b>	<b>DISADVANTAGED BUSINESS ENTERPRISES (DBE) REQUIREMENTS</b>
<b>ARTICLE 24.</b>	<b>COST RECORDS</b>
<b>ARTICLE 25.</b>	<b>ENDORSEMENT OF PLANS</b>
<b>ARTICLE 26.</b>	<b>SUCCESSORS AND ASSIGNS</b>
<b>ARTICLE 27.</b>	<b>TAX RESPONSIBILITY</b>
<b>ARTICLE 28.</b>	<b>EXTENT OF AGREEMENT</b>
<b>ARTICLE 29.</b>	<b>GOVERNING LAW</b>
<b>ARTICLE 30.</b>	<b>REFERENCES</b>

## **ARTICLE 1**

### **CONDITIONS OF THE CONTRACT**

- 1.1 The FPC, Louisiana Capital Improvement Projects Procedure Manual for Design and Construction, 1985 Edition, is hereby modified to facilitate the design and construction of DOTD projects. The Louisiana Department of Transportation and Development shall include this Manual as part of and a condition of the Contract between the DOTD and Designer.

## **ARTICLE 2**

### **DEFINITIONS**

- 2.1 *The Owner* is the Louisiana Department of Transportation and Development, hereafter referred to as the Department or the DOTD.
- 2.2 *The Designer* is a person or organization professionally qualified and licensed to practice Architecture, Engineering, or Landscape Architecture in accordance with the laws of the State of Louisiana, who is to perform Basic Services for the Project, as named in the Contract.
- 2.3 *Consultants* are individuals or organizations engaged by the Department or the Designer to provide professional consultant services complementing or supplementing the Designer's Services. As applicable, Consultants shall be licensed to practice in accordance with laws of the State of Louisiana. The Department shall engage or have the Designer furnish, as part of the Designer's Services, the services of Consultants which are deemed necessary for the project. Normal Consultants are architects, landscape architects, civil, structural, and mechanical and electrical engineers, etc.; compensation for which is included in Designer's basic fee. Special Consultants are those, other than the above, which the Department may approve, as required for the Project, to perform special services and for which compensation will be in accordance with Article 5.3.
- 2.4 *The Project* is a DOTD Project for which funds are available. Project funds may be State Capital Outlay funds and/or Federal funds made available for this Project through the Federal Highway Administration (FHWA). If this project is to receive Federal funds then applicable Federal rules and regulations apply.
- 2.5 *The Available for Construction (AFC)* is the actual amount of funds available for awarding the construction contract(s).

## **ARTICLE 3**

### **DOTD-USER AGENCY RESPONSIBILITIES**

- 3.1 The DOTD will assign a Project Manager during the design phase and a Project Engineer

during the construction phase of the project. The Designer will be notified by DOTD of the name, address and phone number of their Project Engineer/Manager, in writing prior to receiving bids on the Project.

- 3.2 After selection of the Designer and prior to signing of the Contract, the Department shall furnish to the Designer the Preliminary Program, as described below and a statement of the Available Funds for Construction (AFC).
- 3.3 After the Contract is signed by the Department, the Department shall schedule and hold a Pre-Design Conference at the DOTD's headquarters building in Baton Rouge or other location suitable to the Department. This conference shall be attended by the Designer and representatives of the Department.
  - 3.3.1 The purpose of this conference shall be to initiate a general review and discussion of the Project, including, but not limited to, adopting or confirming the following:
    - 1) The Preliminary Program defining (a) the type of usage, number and sizes of spaces required, (b) adjacency considerations, (c) the type and number of people using the facility and (d) the activities to be held in the facility;
    - 2) The location of the facility, and relevant site information;
    - 3) The Funds Available for Construction (AFC) and the Designer's Compensation;
    - 4) The Time Schedule, outlining anticipated completion dates of designated phases as described in Article 7 hereinafter and the anticipated period of construction. The Time Schedule for planning phases shall commence with the date of the Pre-Design Conference and shall continue until delivery of all construction documents to the Department is complete, coordinated and ready to bid. The number of calendar days in the time schedule shall take into account review periods agreed to between the Designer and Department.

A detailed review of the latest Instructions to Designer's which will be given to the Designer prior to his signing the Contract, and the compliance with which shall be a part of the Designer's obligation under the Contract, including any revisions made by the Department and agreed to by the Designer. Because the Department has existing Processes and Forms in place, the Department will deviate from the Instructions to Designer's (latest addition, as amended) which is published by the FPC and not use the following portions of that document.

\* INSTRUCTIONS

General Instructions to Designers  
Instructions on Standard Forms and Specifications

\* DESIGNER FORMS

Design Phases Transmittal  
Professional Design Services Invoice  
Statement of Probable Cost  
Bid Tabulation Form  
Bid Document Distribution Log  
Cost and Construction Data Report

\* CONTRACT DOCUMENTS

Advertisement for Bid  
Instruction to Bidders  
Bid Form Format  
Contract Between Owner Contractor and Performance and Payment Bond  
Supplemental Conditions  
Change Order Forms  
Partial Occupancy Form  
Recommendation of Acceptance Form  
Building Plaque

- 3.3.2 The Department shall have prepared, at the Department's cost, by a registered land surveyor, a topographical survey of the site including structures, roads, walks, and utilities, when necessary. The Department will conduct or contract for and pay for geotechnical services as described in Article 7.1.1.-4 hereinafter. At the Department's request, the Designer shall outline the scope of the above services and obtain one or more proposals for each.
- 3.4 The Department shall examine all documents submitted by the Designer and shall render decisions pertaining thereto, to avoid unreasonable delay in the progress of the Designer's Services.
- 3.5 The Department will conduct all or part of the required sampling and testing during construction of the Project. In particular, sampling, testing and inspection for the work covered by Divisions 2 and 3 of the CSI's Standard 16 Divisions of Project Specifications. If the Department is unwilling or unable to perform part or all of the required sampling and testing then the Department will select a testing laboratory to perform all remaining tests during construction, and will contract for and pay for all such testing services.
- 3.6 The Department shall provide record construction documents of existing buildings or facilities for renovation or addition projects, when those are available.

## **ARTICLE 4**

### **CONSTRUCTION BUDGET (AFC)**

- 4.1 The Construction Budget is the amount of funds Available For Construction (AFC) of the Project as fixed by the Department and stated in the Contract.
- 4.2 The Designer shall be responsible for designing the project so that the base bid does not exceed the funds Available for Construction. The use of any alternate bids must be approved by the Department.
- 4.3 At the completion of the Program Completion Phase, as stated hereinafter in Article 7, the Designer shall determine whether the funds Available for Construction are realistic for the project when compared with the Completed Program. At this point, or at any other submissions of Probable Construction Cost by the Designer, if such Probable Construction Cost is in excess of funds available (AFC), the Department shall have the option to:
- 1) Instruct the Designer to revise the program to be within the funds available for construction; such program revisions to be done without additional compensation to the Designer, except as provided in Article 7.3, hereinafter.
  - 2) Provide additional funds to increase the Funds Available for Construction (AFC);
- or
- 3) Abandon or suspend the project.
- 4.4 When the lowest bona fide Base Bid exceeds the amount Available for Construction, the Department shall have the option to (1) have the Designer, without additional compensation, modify the Construction Documents as required in order to rebid the project to be within the amount Available for Construction, (2) provide additional funds to award the Construction Contract, or (3) abandon the project.
- 4.4.1 The lowest bona fide Base Bid is defined as the lowest Base Bid submitted by a Contractor, and not withdrawn in accordance with LSA-R.S 48:252 et seq and the 2000 Edition of the DOTD Standard Specifications for Roads and Bridges, Part 1.

## **ARTICLE 5**

### **COMPENSATION**

Compensation to be paid to the Designer for services and reimbursable expenses shall be as follows:

- 5.1 The compensation for Basic Services, as described in Article 7 hereinafter, shall be calculated as the product of the fee percentage and the amount of the Contract Award, including any awarded alternates. The fee percentage shall be computed by the formula:

$$\text{FEE PERCENTAGE} = \frac{42.75}{\text{Log Construction Contract Award}}$$

Until a construction contract is made, an Interim Fee, to be used for making progress payments to the Designer, shall be calculated as the product of the funds Available for Construction (AFC) and the fee percentage computed by the formula:  $\frac{42.75}{\text{Log AFC}}$

When a construction contract award has been made and the final compensation computed as described above, payments to the Designer shall be adjusted to this final compensation, either upward or downward.

- 5.1.1 Compensation to be paid to the Designer on the Interim Fee basis shall remain constant until a Construction Contract Award is made, except when the Department adjusts the AFC prior to receipt of bids and the Designer's contract is amended to reflect the new AFC and the resultant Interim Fee.
- 5.1.2 Compensation to be paid to the Designer shall be appropriately modified for certain projects as follows:
  - 1) A *Renovation Factor* of up to 1.25, to be established and set by the Department for each individual project, will be multiplied by the fee percentage to arrive at the Fee for renovation projects, when determined by the Department to be justified. This Fee shall include verifying existing conditions and/or any other additional work incidental to renovation projects. The Renovation Factor will be set in proportion to the additional work anticipated by the Department. Simple building additions will receive lower factors than full building renovations. The Renovation Factor will not be applied to reroofing projects, except in unusual circumstances.
  - 2) On roofing projects, an addition may be made to the Basic Fee for full time inspection services during construction.
  - 3) *Duplicated Work Factor* shall be subject to negotiation between the Department and Designer on an individual project basis.
  - 4) *Multiple Contracts*: If the Department determines that the best interest of the Project is served by bidding and constructing the Project under two or more separate contracts, the fee shall be established for each portion by application of the formula in 5.1 above.
  - 5) If a project consists of more than one element, to be bid and constructed under one contract, then the AFC to be used in computing the fee under the formula in 5.1 above shall be the sum of the AFC's of each element.



- 6) *Prefabricated Buildings*: A fee to be established and set by the Department for each individual project, not to exceed that stated in 5.1 above.
- 5.2 Payment to the Designer for Additional Services, defined in Article 7.3, shall be made on the basis of Designer's Direct Personnel Expense for performing such services multiplied by a factor of 3.0.
  - 5.2.1 Direct Personnel Expense is defined as the normal, straight-time DOTD audited salary rates of all the Designer's personnel, subject to DOTD maximums, engaged in the Project. This shall also include the direct salaries of Designer's Consultants involved in the additional services.
  - 5.2.2 Designer shall prepare change orders caused by errors or omissions of the Designer without additional compensation. If the error or omission results in damage to the Department, the Designer may be required to pay for the Construction Cost of such change orders or a portion thereof, as determined by Department.
  - 5.2.3 Preparation of documents required for change orders for any cause shall not be started without Department's prior written approval.
- 5.3 *Reimbursable Expenses* are in addition to the compensation for Basic and Additional Services and include actual expenditures made by the Designer, his employees or his professional consultants in the interest of the project as directed and authorized by the Department in writing prior to their incurrence.
  - 5.3.1 The Department shall reproduce or pay for the cost of printing Construction Documents for the Department's use. The Designer shall pay for the cost of reproducing all construction documents necessary for regulatory agencies approvals.
- 5.4 Designer will be paid for prolonged contract administration and inspection of construction should the contract time, as may be extended, be exceeded due to no fault of the Designer and liquidated damages are recommended by the Designer and approved by the DOTD Project engineer. The amount of such payment to the Designer shall be computed by dividing 20% of the basic total fee by the number of days construction time, as extended, and multiplying by the number of days of assessed liquidated damages.
- 5.5 Liquidated Damages: When the Designer exceeds the established time schedule, as described in Article 3.3.1.-4, including any extensions of time approved by the Department, then the amount of the fee shall, as liquidated damages, be reduced by an amount to be determined by the Department for each working day past the original or extended date that the Designer has not delivered all Construction Documents to the Department complete, coordinated and ready to bid. Completeness will be determined by the Department as described in Article 6.1.2 and Article 7.1.4.

## ARTICLE 6

### PAYMENTS TO THE DESIGNER

Payments on account of Designer's Services shall be made as follows:

#### 6.1 Basic Services

- 1) Upon satisfactory completion of all Basic Services for each phase as described in Article 7, payment for the following phases of the Designer's services will be made up to the following cumulative percentages of the Designer's fixed compensation:

Program Completion	5%
Schematic Design	15%
Design Development	40%
Submission of Construction Documents to Statutory Agencies and DOTD	60%
Approval of Construction Documents	70%
Bidding and Contract	75%

- 2) Monthly in proportion to the Contractor's Estimate for Payment for the following phase:

Construction Phase	95%
--------------------	-----

- 3) Upon satisfactory completion and furnishing required documents to the Department for the following phase:

Construction Close-Out Phase	100%
------------------------------	------

Payments to the Consultant for services rendered shall be made monthly based on a certified invoice directly proportional to the percentage of completed work for each Phase. The monthly progress schedule shall: a) show in detail the status of the work; b) be subdivided into appropriate Phases with estimated percentages for each Phase, and c) be of a form and with a division of items as approved by DOTD. The allowable costs shall be in accordance with the cost principles and procedures set forth in 48 CFR 31, as appropriate.

The monthly invoice, reflecting the amount and value of work accomplished to the date of such submission less five percent for retainage, shall be submitted directly to the Project Manager. The retainage shall be released following completion of the work for each Phase, or upon written authorization by the DOTD Chief Engineer. The invoice shall also show the total of previous payments-on-account to this Contract, and the amount due and payable as of the date of the current invoice.

The original and five copies of the invoice shall be submitted to the Project Manager. The invoice must be signed, and dated, as covered under the “Contract Identification” section of this Contract, by a principal member of the Consultant’s firm.

Upon receipt and approval of each invoice, DOTD shall pay the amount shown to be due and payable within 30 days.

## **ARTICLE 7**

### **DESIGNER’S SERVICES**

#### **7.1     *Basic Services***

The Designer’s Basic Services consist of the phases described below and include the normal Services of the Designer and normal complementary or supplementary Services of his Consultants, and any other services included in the Contract. Review Documents of each phase shall be submitted to the Department and to the User Agency for their approval. In addition, for the Construction Documents Phase, Review Documents shall be submitted to regulatory agencies designated by the Department or required by law, for their approvals. Designer shall not proceed to any subsequent phases until the requisite written approvals are received and until authorized by the Department in writing to so proceed. All statements of probable Construction Cost shall be adjusted to the anticipated bid date of the project.

The Designer shall be responsible for compliance with all applicable codes as required in accordance with LSA R.S. 40:1721 through 1724. All items not specifically covered by codes shall be designed in accordance with the standards established by accepted professional groups or by industry standard for that specific item of work.

##### **7.1.1   *Program Completion Phase***

- 1) After the initial pre-design conference the Designer shall meet and work with the Department to determine more detailed program requirements for the project and shall refine and complete the program in a form acceptable to the Department.
- 2) The Designer shall determine whether the funds Available For Construction are realistic for the project when compared with the completed program, as described in Article 4.3.
- 3) The Completed Program shall be submitted to the Department for their written approval and thereafter only the Department shall have authority to alter the Program. Any authorization by the Department to alter the Completed Program shall be in writing.
- 4) The Designer may be required to obtain one or more proposals from

registered land surveyors and geotechnical engineers when required for the Project and recommend to the Department for their approval. The Department may provide these services in coordination with the Designer or may contract directly for such services.

- 5) The Designer shall finalize the Time Schedule as described in Article 3.3.1-4, for the Department's approval.

#### *7.1.2 Schematic Design Phase*

- 1) Based on the approved Completed Program, funds Available For Construction, Site Location and Time Schedule, the Designer shall prepare Schematic Design Documents in such format and detail as required by the Department, consisting of drawings, outline specifications and other documents illustrating the general scope, scale and relationship of the Project components for the written approval of the Department. Specific documentation shall be in accordance with Articles 3.21 through 3.25 of the Description of Designated Services for this phase as listed in AIA Document B163 Standard Form of Agreement between DOTD and Architect for Designated Services, 1998 or latest edition, as applicable to this project, except that no study model will be required, but a sketch perspective will normally be required.
- 2) The Designer shall submit to the Department a Statement of Probable Construction Cost based on current area, volume or other unit costs method.
- 3) An analysis of requirements of the Louisiana Code for State Owned Buildings as they relate to this project shall be prepared by the Designer and submitted to the Department for review and approval.
- 4) The Designer may be required to participate and assist the Department in obtaining the required Environmental Clearances for the Project.

#### *7.1.3 Design Development Phase*

- 1) Based on the approved Schematic Design Documents and any adjustments authorized by the Department in the Program or the funds Available for Construction, the Designer shall prepare, for approval by the Department, Design Development Documents consisting of drawings, expanded outline specifications based on the 16 Divisions of the Construction Specifications Institute (CSI) format, and other documents to fix and describe the size and character of the entire project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be required. Specific documentation shall be in accordance with Articles 4.21 through 4.25 of the "Description of Designated Services", for this phase as listed in

AIA Document B163 Standard Form of Agreement between DOTD and Architect for Designated Services, 1998 or latest edition, as applicable to this project, except that no study model will be required, however a sketch perspective will normally be required.

- 2) The Designer shall submit to the Department a Statement of Probable Construction Cost based on the 16 Divisions of the Construction Specification Institute format. This shall have back-up material and data in such format and detail as required by DOTD to support each of the 16 Divisions.
- 3) The Designer shall submit a more detailed analysis of the codes required by the Louisiana Code for State Owned Buildings, consisting of, but not necessarily limited to, statements of (1) Classification of occupancy, (2) Classification of construction, (3) Code allowable area increase for exceptions. Special attention shall be given to Department of Natural Resources regulations concerning requirements for pipe lines.
- 4) A preliminary Energy Conservation Analysis for the Project shall be prepared by the Designer and submitted to the Department for review and approval. The requirements of this analysis shall be as detailed in the "Instructions to Designers", referred to hereinbefore.

#### 7.1.4 *Construction Documents Phase*

- 1) Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Funds Available for Construction, authorized by the Department, the Designer shall prepare for written approval by the Department and other State Regulatory agencies as required by law, the following documents bearing the Designer's seal and those of his consultants, all sufficiently complete and clear to define the quantity and quality of the work to bid and build the Project:
  - (a) Working Drawings - dimensioned plans, elevations, sections, details and schedules of all architectural, landscaping, civil, structural, mechanical and electrical work in the Project in general conformity with Chapter 12, or latest Edition, of the AIA Handbook of Professional Practice with the exception of the sections entitled "Reproduction" and "Ownership".
  - (b) Technical Specifications - of the materials, processes or systems to be incorporated in the work, using the 16 Divisions format of the Construction Specifications Institute. The Designer shall work with the Department's Contracts and Specifications Unit to facilitate substituting DOTD's Standard and Supplemental specifications for requirements, processes, work and materials covered under Divisions

1, 2 and 3 of CSI's Standard Division format where applicable. State law and Federal requirements prohibits the Designer from closing specifications on any item in the specification except as provided for in R.S. 38:2290-2296 and in R.S. 38:2290(A). Any reason for closing specifications as provided for by Federal regulations or state law shall be brought to the attention of the Department in writing for review. Additional requirements for specifications are contained in the "Instructions to Designers" documents which will be furnished to the Designer.

- (c) Bidding and Construction Contract Forms - the Department will combine the Designer produced Technical Specifications with DOTD's Standard Specifications, Supplemental Specifications, Special Provisions and Bid forms to produce the Construction Proposal. These documents will be reproduced at the Department's expense.
- 2) The Designer shall submit to the Department an updated Statement of Probable Construction Cost based on the 16 Divisions of the Construction Specifications Institute format with back-up material as described in 7.1.3 above.
- 3) The Designer shall update and verify the Energy Conservation Analysis prepared in the Design Development Phase.
- 4) The Designer shall submit one bound copy of all design calculations on the Project for the Department's files.

#### 7.1.5 *Bidding and Contract Phase*

- 1) Upon receipt of all necessary written approval's, receipt of corrected and completed reproducible Plans and Technical Specifications, completion of all Construction Documents, and approval of the latest Statement of Probable Construction Cost, the Department will advertise the Project for bids. It is the Designer's responsibility to have approvals which have not expired or will not be expired by the time of anticipated contract award.
- 2) The Department shall be solely responsible for the furnishing and distribution of copies of Bidding Documents. The Designer shall not distribute any Project document to any potential bidder or other party (except permit or regulatory agencies) without written consent of the Department.
- 3) The Designer shall be responsible for evaluating prior approval requests for substitution of materials, products and equipment required by the applicable statutes and Department procedures.

- 4) The Designer shall prepare and submit to the Department all addenda related to the technical specifications and plans, in accordance with the Contract Documents, as required modifying or clarifying the Construction Documents. All addenda or plan revisions are to be approved and distributed by the Department.
- 5) The Designer shall arrange and conduct a pre-bid conference in accordance with the Contract Documents.
- 6) It is not necessary that the Designer to be present during the bid opening. The Designer may be required to assist the Department in evaluating the bid received.

#### 7.1.6 *Construction Phase*

- 1) The Designer shall provide administration of the Construction Contract as set forth herein and in the Construction Documents in conjunction and coordination with the Department's representative.
- 2) The Designer shall coordinate with the Department's representative(s) and make written recommendations for the Department's approval, for the type and number of tests required for the Project, as soon as the Construction Contract has been awarded. The Department may perform and conduct some of the required sampling, testing and inspection services relative to CSI Divisions 1 and 2 and/or will select, contract for and pay for all required testing services.
- 3) The Designer, as the primary representative of the Department during the Construction Phase, shall advise and consult with the Department's representative prior to issuing significant instructions to the Contractor. All significant instructions shall be issued through the Designer. The Designer shall have authority to act on behalf of the Department to the extent provided herein or as provided for in the Contract Documents unless otherwise modified in writing.
- 4) After the execution of the Construction Contract the Department will issue a Notice to Proceed to the Contractor and will notify the Designer to arrange for and conduct a pre-construction conference. The Department shall furnish to the Contractor ten sets of the Construction Documents required to construct the project (see Article 5.3.1).
- 5) The Designer and his principal consultants shall visit the project as often as necessary to become generally familiar with the progress and quality of the work and to determine in general if the work is proceeding in accordance

with the contract documents. Such visits by the Designer shall *not be less* than once per week when the work is in progress. On the basis of the Designer's on-site observations, he shall endeavor to guard the Department against defects and deficiencies in the Work of the contractors. A written report of each visit by the Designer to the Project shall be mailed or hand delivered to the Department's representative and Contractor within five (5) calendar days after each visit.

- 6) The Designer agrees that his designated representatives on the construction project shall be qualified by training and experience to make decisions and interpretations of the Construction Documents and such interpretations shall be binding upon the Designer as if made by him. The Designer agrees that he will make every effort to consult with, coordinate with, and reach agreement with the Department's representative prior to making significant interpretations or decisions. Should the Designer and the Department's representative not be able to reach a consensus the final decision or interpretation will be made by the DOTD Chief Engineer. All such decisions shall be confirmed in writing immediately with copies to the Department and Contractor, conditioned that such decisions and interpretations shall not modify the requirements of the contract documents. Modification to the contract shall be made only through approved change orders processes using DOTD procedures.
- 7) Based on observations at the site and on the Contractor's Applications for Payment, the Designer shall determine the amount owed to the Contractor. Partial estimates prepared and approved by the Designer with the assistance and approval of the Department's representative will be processed for payment to the contractor utilizing Department procedures. No Partial Estimate shall be issued until a schedule of values has been received from the Contractor. The approval of the Partial Estimate by the Designer shall constitute a representation by the Designer to the Department, that the Work has progressed to the point indicated and that to the best of the Designer's knowledge, information and belief, the quality of the Work is in general accordance with the Contract Documents and that the Contractor is entitled to payment in the amount certified. By issuing a Partial Estimate, the Designer shall not be deemed to represent that he has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Contract sum. The Designer shall process Partial Estimates as promptly as possible with copies to the Contractor, in accordance with DOTD procedures.
- 8) The Designer shall instruct the Contractor to establish and conduct a regular schedule of monthly meetings, to be held on the job site each month throughout the construction period, and shall require attendance at the meetings by representatives of his principal Consultants. The Department



shall be notified of such meetings and may be represented. It shall be the principal purpose of these meetings, or conferences, to effect coordination, cooperation and assistance in every practical way to the end of maintaining progress of the project on schedule and completing the project within the contract time.

- 9) The Designer shall prepare and submit to the Department and Contractor a monthly Status Report on the Project. The form of the Report shall be supplied to the Designer at the Pre-Construction Conference. The Designer's Status Report shall be submitted to the Department monthly along with the Contractor's Partial Estimate and the Designer's Statement for Professional Services.
- 10) The DOTD Chief Engineer shall be the final interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by the Contractor. The Designer shall advise and assist the Department in making decisions, on all claims of the Contractor relating to the execution and progress of the Work and on all other matters or questions related thereto.
- 11) The Designer shall have authority to reject work which does not conform to the Contract Documents. If the Designer considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, he shall request the Department to authorize special inspection or testing of any work in accordance with the provisions of the Contract Documents whether or not such work be then fabricated, installed or completed.
- 12) The Designer shall promptly review shop drawings, samples and other submissions of the Contractor only for conformance with the design concept of the Project and for compliance with the information given and the design concepts expressed in the Contract Documents. The Consultant shall maintain a record of submittals and copies of submittals supplied by the Contractor.
- 13) Only with the authorization of the Department, shall the Designer prepare Change Orders. The Designer shall obtain from the Contractor his estimate of cost and time changes in accordance with the Contract Documents for the Change Order, review and approve same, and submit it to the Department for approval before any changes are made in the Contract. No additional compensation shall be due the Designer for preparation of Change Orders without the written prior approval for such compensation by the Department, except as described in Article 5.
- 14) The Consultant shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or

procedures, or for safety precautions and programs in connection with the work, which are set forth in the construction contract as being the Contractor's rights and responsibilities under the Contract Documents.

- 15) LSA-R.S. 48:256.4 entitled Acceptance by the Department, defines the procedure to be followed in accepting a project and gives the Department the discretion to make partial acceptance of a specified area of completed work or final acceptance upon full completion of all the work. Upon completion of the work, or prior to beneficial occupancy, as requested by the Department, the Designer shall conduct an inspection of the project with the Department's representative and the Contractor to determine if the Contractor's work is in general accordance with Contract Documents. The Designer shall prepare a list of items (punch-list) for correction or completion.

When the Department desires to accept on partial completion, or for beneficial occupancy purposes, the Designer shall recommend such acceptance or occupancy. Upon Satisfactory completion of the Punch-List items the Designer and the Department's representative shall conduct a final inspection to inspect the work. The Department will issue a final acceptance of the project and will cause the final acceptance to be recorded. After the Contractor's furnishing of a clear lien certificate, the Designer shall prepare and submit the Final Estimate for contractor payment to the Department.

Upon recommendation of acceptance, the Designer shall receive, review and forward to the Department guarantees, operation, and maintenance manuals, keys and other closing documents as required by the Contract Documents. Designer shall obtain a written receipt for these and forward same to the Department, together with copies of all guarantees and warranties.

#### *7.1.7 Construction Close-Out Phase*

- 1) After acceptance of the Project by the Department, the Designer shall prepare and furnish to the Department (1) a Final Report in the format and containing information as required by the Department, and (2) two sets of Record Drawings (As-Builts) prepared by the Designer, one set on reproducible film sepias and the other a set of prints made from the film sepias, for the Department's use and files. The Record Drawings shall be prepared on the basis of information furnished by the Contractor and the change orders and shall be reviewed with and approved by the Contractor prior to submission.

Compliance with all of the above will constitute completion of the Designer's Basic Services for compensation purposes, however, the Designer shall be required to follow up on items to be corrected during the warranty period and shall arrange for and conduct an inspection of the Project prior to expiration of the one year warranty period and shall be required to inform the Department

and Contractor of any items to be corrected and shall inspect the Project as required until the work is completed, without additional compensation.

7.2 *Project Representation beyond Basic Services*

7.2.1 If the Department and Designer agree that more extensive representation at the site is required than is described in Article 7.1.6, then the Designer shall provide one or more Project Representatives to carry out such responsibilities at the site.

7.2.2 Such Project Representatives shall be selected, subject to Department's approval, employed and directed by the Designer, and the Department shall compensate the Designer for such services in an amount equal to the approved direct salary of the Project Representative times a multiplier of 1.6. If, in the opinion of the Department, such representatives are either negligent or unqualified to perform their duties, the Designer's representative shall be replaced promptly, without protest.

7.2.3 Through the services of such Project Representatives, the Designer shall endeavor to provide further protection for the Department against defects and deficiencies in the work.

7.2.4 The Department shall have the option of providing one or more Project Representatives at the site during construction, which representative(s) shall be paid by the Department and shall be under his direction.

7.3 *Additional Services*

Additional Services, as required by the Department, shall be provided by the Designer only when authorized in writing by the Department, prior to performance of the services, and shall be compensated by the Department as described in Article 8. Additional services may include, but are not limited to, the following:

7.3.1 Providing design services relative to future facilities, systems and equipment which are not included to be constructed as part of the Project.

7.3.2 Providing interior design and other services required for the selection of furniture and furnishings, and movable equipment.

7.3.3 Preparing measured drawings when these are not available, or for archival research.

7.3.4 Providing extensive Program revisions during the Program Completion Phase when the necessity of such as additional services is authorized in writing by the Department.

7.3.5 Providing any other special services not otherwise included in the Contract or not customarily furnished in accordance with generally accepted Designer's practice.

## **ARTICLE 8**

### **CONTRACT CHANGES**

- 8.1 Minor revisions in the described work shall be made by the Consultant without additional compensation as the work progresses. Considerations for minor revisions have been included in the compensation computations. If DOTD requires more substantial revisions or additional work which the Consultant believes to warrant additional compensation, the Consultant shall notify DOTD in writing within 30 days of being instructed to perform such work.

If DOTD agrees that the required work is necessary and warrants additional compensation, the Contract shall be changed by a **Supplemental Agreement**.

The Consultant shall not commence any additional work requiring extra compensation until one of the situations described above ("Contract Changes") has been executed and authority to proceed has been given by DOTD.

## **ARTICLE 9**

### **OWNERSHIP OF DOCUMENTS**

- 9.1 All data collected by the Consultant and all documents, notes, drawings, tracings, and files collected or prepared in connection with this work, except the Consultant's personnel and administrative files, shall become and be the property of DOTD. DOTD shall not be restricted in any way whatsoever in its use of such material. The DOTD: (i) shall remove the title blocks, professional seals, logos and any other indicia of origination, ownership or responsibility from all contract documents; (ii) shall and does hereby agree to hold harmless and indemnify the Consultant of and from any and all claims, actions, damages or costs, including court costs and attorney's fees, arising from or in any way related to such use of the contract documents, without regard to any alleged negligence or fault on the part of the Consultant, in whole or in part.

No public news releases, technical papers, or presentations concerning this project may be made without the prior written approval of DOTD.

## **ARTICLE 10**

### **DELAYS AND EXTENSIONS**

- 10.1 The Consultant shall be given an extension of time for delays beyond its control or for those caused by tardy approvals of work in progress by various official agencies.

## ARTICLE 11

### PROSECUTION OF WORK

- 11.1 **General** - The Consultant shall provide sufficient resources to insure completion of the project in accordance with the project scope and within the contract time limit.
- 11.2 **Disqualification** - The progress of the work shall be determined monthly, with the submission of an invoice and progress schedule to DOTD. For any phase, the project shall be considered **on schedule** if the percentage of the total work complete is equal to or greater than the percentage of contract time elapsed. If the ratio of percentage of work complete to percentage of time elapsed is less than .80, the Consultant shall be notified in writing that he is delinquent and shall be subject to disqualification if the ratio falls to .75. Additional warnings may be issued at the discretion of the Project Manager. If the above ratio falls to .75, the Consultant shall be notified in writing by the Project Manager that he is in a state of **Disqualification**. During the period of disqualification, the Consultant shall not be awarded additional contracts nor shall he be approved as a sub consultant on contracts. The period of disqualification shall continue until the completed work on the contract is not delinquent by more than the foregoing percentages or until all work on the contract has been satisfactorily completed.

The overall project schedule includes the combined time allotted for all phases and parts of a contract, subject to any overlaps of concurrent activities. For the purposes of evaluating work progress, the elapsed time for any phase begins in accordance with the original project schedule, even though work on a phase may not commence on schedule. Should any phase of the work fail to commence on the original schedule because of delinquencies in a previous phase or part, the elapsed time in the above ratio shall be measured from the time the phase would have begun had the previous phase been completed on schedule. Should any delays in progress be necessitated by circumstances outside of the Consultant's control, it shall be the responsibility of the Consultant to request an appropriate adjustment in contract time.

- 11.3 **Appeal of Disqualification** – If the Consultant believes that the assignment of **Disqualification** status is unjust, he may submit a written appeal to the DOTD Chief Engineer. Upon consideration of the arguments provided in the appeal and any other relevant information, the Chief Engineer shall render a binding decision.

## ARTICLE 12

### TERMINATION OR SUSPENSION

- 12.1 The terms of this Contract shall be binding upon the parties hereto until the work has been completed and accepted by DOTD and all payments required to be made to the Consultant have been made. However, this Contract may be terminated under any or all of the

following conditions:

1. By mutual agreement and consent of the parties hereto.
2. By DOTD as a consequence of the failure of the Consultant to comply with the terms, progress or quality of work in a satisfactory manner, proper allowance being made for circumstances beyond the control of the Consultant.
3. By either party upon failure of the other party to fulfill its obligations as set forth in this Contract.
4. By DOTD due to the departure for whatever reason of any principal member or members of the Consultant's firm.
5. By satisfactory completion of all services and obligations described herein.
6. By DOTD giving 30 calendar days notice to the Consultant in writing and paying compensation due for completed work.

Upon termination of this Contract, the Consultant shall deliver to DOTD all plans and records of the work compiled to the date of termination. DOTD shall pay in full for all work accomplished up to the date of termination, including any retained percentage earned to date.

Should DOTD desire to suspend the work, but not definitely terminate the Contract, this may be done by 30 calendar days notice given by DOTD in writing to that effect. The work may be reinstated and resumed in full force and effect upon receipt by the Consultant from DOTD of 30 calendar days notice in writing to that effect.

## **ARTICLE 13**

### **INSURANCE REQUIREMENTS**

- 13.1 Insurance - Prior to advertising for bids, the Designer shall furnish to the Department proof of coverage for the following:
- 13.1.1 Comprehensive General Liability with minimum limits of \$500,000 per accident/occurrence
- 13.1.2 Comprehensive Automobile Liability Insurance with minimum limits of \$300,000 per accident/occurrence.
- 13.1.3 The Designer is reminded that he is responsible for providing Workmen's Compensation coverage as statutorily required.
- 13.1.4 Professional Liability (E&O) as follows:

Minimum  
Limits of Liability

\$250,000

Construction Cost

Up to \$1,500,000

\$500,000	\$1,500,000 up to \$3,500,000
\$750,000	\$3,500,000 up to \$5,000,000
\$1,000,000	\$5,000,000 up to \$10,000,000
To be determined by DOTD	Over \$10,000,000

No deductible shall be in excess of five percent (5%) of the amount of the policy. If the deductible is in excess of \$10,000, then the policy shall be written with first dollar defense coverage endorsement. In the event of a claim against this policy, the Designer shall maintain limits of liability sufficient to meet the above insurance requirements.

## **ARTICLE 14**

### **INDEMNITY**

- 14.1 The Consultant agrees to indemnify and save harmless DOTD against any and all claims, demands, suits, and judgments of sums of money (including attorney's compensation and cost for defense) to any party for loss of life or injury or damage to persons or properties arising out of, resulting from, or by reason of, any negligent act, or omissions by the Consultant, its agents, servants, or employees while engaged upon or in connection with the services required or performed by the Consultant hereunder.

## **ARTICLE 15**

### **ERRORS AND OMISSIONS**

- 15.1 It is understood that all work required of the Consultant under contract shall meet the standard requirements as to general format and content, and shall be performed to the satisfaction and approval of DOTD. DOTD's review, approval, acceptance of or payment for the services required under this contract shall not be construed to operate as a waiver of any of DOTD's rights or any causes of action arising out of or in connection with the performance of this contract.

The Consultant shall be responsible for the professional quality and technical accuracy of all services performed under this contract. Ideally, errors or substandard work shall be revealed during normal work reviews. In such cases, the work should be returned for correction and payments withheld until delivery of an acceptable product. The consultant shall, without additional compensation, also correct or revise any deficiencies discovered subsequent to final acceptance by DOTD, resulting from any negligent act, or omissions by the consultant in a timely manner. If the project schedule necessitates that DOTD staff make corrections due to oversight, errors or omissions by the consultant, the consultant shall be responsible for reasonable cost incurred by DOTD to make the corrections. Consultant shall be charged the

actual payroll cost for making such corrections plus the applicable overhead cost not to exceed the allowable overhead for the Consultant's firm for this contract. In addition to costs that may be necessary to make corrections to the plans, the Consultant (or his insurer) shall be responsible for costs to correct design errors during construction.

## **ARTICLE 16**

### **CLAIM FOR LIENS**

- 16.1 The Consultant shall hold DOTD harmless from any and all claims for liens for labor, services or material furnished to the Consultant in connection with the performance of its obligations under this Contract.

## **ARTICLE 17**

### **COMPLIANCE WITH LAWS**

- 17.1 The Consultant shall comply with all applicable Federal, State and Local laws and ordinances, as shall all others employed by it in carrying out the provisions of this Contract. Specific reference is made to Act No. 73 of 1950 of the State of Louisiana, an act to regulate the practices of engineering and land surveying.

## **ARTICLE 18**

### **COMPLIANCE WITH CIVIL RIGHTS ACT**

- 18.1 The Consultant agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246; the Federal Rehabilitation Act of 1973, as amended; the Vietnam Era Veteran's Readjustment Assistance Act of 1974; Title IX of the Education Amendments of 1972; the Age Act of 1972, and Consultant agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

Consultant agrees not to discriminate in its employment practices, and shall render services under this Contract without regard to race, color, age, religion, sex, national origin, veteran status, political affiliation, or disabilities.

Any act of discrimination committed by Consultant, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this Contract.

## **ARTICLE 19**

### **DISPUTES**

- 19.1 Any dispute concerning a question of fact in connection with the work not disposed of by



agreement between the parties hereto shall be referred in writing to the DOTD Chief Engineer or his duly authorized representative for determination, whose decision in the matter shall be final and conclusive on the parties to this Contract.

## **ARTICLE 20**

### **PROGRESS INSPECTIONS**

- 20.1 During the progress of the work, representatives of DOTD and other interested parties when so named herein shall have the right to examine the work and may confer with the Consultant thereon. In addition, the Consultant shall furnish, upon request, prints of any specific item of his work for DOTD inspection. The Consultant shall confer with DOTD and such other parties and from time to time may submit sketches illustrating significant features of the work for interim approval.

## **ARTICLE 21**

### **COVENANT AGAINST CONTINGENT FEES**

- 21.1 The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty DOTD shall have the right to annul this Contract without liability, or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom; but, this provision shall not be construed to extend to a contract if made with a corporation for its general benefit.

## **ARTICLE 22**

### **SUBLETTING, ASSIGNMENT, OR TRANSFER**

- 22.1 This Contract, or any portion thereof, shall not be transferred, assigned, or sublet without the prior written consent of DOTD. In the event the Consultant does elect to sublet any of the services required under this Contract, it must take affirmative steps to utilize disadvantaged (DBE) sources of supplies, equipment, construction, and services. Affirmative steps shall include the following:

1. Including qualified DBE on solicitation lists.

2. Assuring that DBE are solicited whenever they are potential sources.
3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum DBE participation.
4. Where the requirement permits, establishing delivery schedules which shall encourage participation by DBE.
5. Using the services and assistance of the Small Business Administration, the Office of Disadvantaged Business Enterprise of the Department of Commerce, and the Community Services Administration as required.

Also, the Consultant is encouraged to procure goods and services from labor surplus areas.

## **ARTICLE 23**

### **DISADVANTAGED BUSINESS ENTERPRISES (DBE) REQUIREMENTS**

- 23.1 It is the policy of the Federal Highway Administration that DBE as defined in 49 CFR 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds, consequently, the DBE requirements of 49 CFR 26 apply to this Contract.

The Consultant agrees to ensure that DBE as defined in 49 CFR 26 have the maximum opportunity to participate in the performance of this Contract and any subcontracts that may be let. In this regard, the Consultant shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that DBE have the maximum opportunity to compete for and perform services relating to this Contract. Furthermore, the Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract.

Failure to carry out the above requirements shall constitute a breach of this Contract. After proper notification by DOTD, immediate remedial action shall be taken by the Consultant as deemed appropriate by DOTD or the Contract shall be terminated. The option shall rest with DOTD.

The above requirements shall be physically included in all subcontracts entered into by the Consultant.

## **ARTICLE 24**

### **COST RECORDS**

- 24.1 The Consultant and its subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred relative to this project. Costs shall be in accordance with 48 CFR 31 of the (FARS), as modified by DOTD audit guidelines, and which are incorporated herein by reference as if copied in extenso. The FARS are available for inspection through [www.transportation.org](http://www.transportation.org). Records shall be

retained until such time as an audit is made by DOTD or the Consultant is released in writing by the DOTD Audit Director, at which time the Consultant may dispose of such records. The Consultant shall, however, retain such records for a minimum of five years from the date of payment of the last estimate under this Contract or the release of all retainage for this Contract, whichever occurs later, for inspection by DOTD and/or Legislative Auditor and the FHWA or General Accounting Office (GAO) under State and Federal Regulations effective as of the date of this Contract.

## **ARTICLE 25**

### **ENDORSEMENT OF PLANS**

- 25.1 The Consultant shall endorse all plans prepared by it in the manner required by DOTD.

## **ARTICLE 26**

### **SUCCESSORS AND ASSIGNS**

- 26.1 This Contract shall be binding upon the successors and assigns of the respective parties hereto.

## **ARTICLE 27**

### **TAX RESPONSIBILITY**

- 27.1 The Consultant hereby agrees that the responsibility for payment of taxes on the payments received under this Contract shall be Consultant's obligation.

## **ARTICLE 28**

### **EXTENT OF AGREEMENT**

- 28.1 The Contract, this Manual, and the Instructions to Designers represent the agreement between the Department and the Designer. The Contract may be amended only by written instrument signed by the Department and the Designer.

## **ARTICLE 29**

### **GOVERNING LAW**

- 29.1 The Contract shall be governed by the laws of the State of Louisiana.

## **ARTICLE 30**

### **REFERENCES**

30.1 All designs and engineering documents shall be prepared in accordance with the latest editions, supplements and revisions of the following DOTD manuals, when applicable.

1. AASHTO Standards, ASTM Standards or DOTD Test Procedures
2. DOTD Location and Survey Manual
3. DOTD Roadway Design Procedures and Details
4. DOTD Hydraulics Manual
5. DOTD Standard Specifications for Roads and Bridges
6. Manual of Uniform Traffic Control Devices (Millennium Edition)
7. DOTD Traffic Signal Design Manual
8. National Environmental Policy Act (NEPA)
9. National Electric Safety Code
10. DOTD Environmental Impact Procedures (Vols. I-III)
11. Policy on Geometric Design of Highways and Streets
12. Construction Contract Administration Manual
13. Materials Sampling Manual
14. DOTD Bridge Design Manual
15. Consultant Contract Services Manual
16. The 2000 Louisiana Standard Specifications for Roads and Bridges
17. Guide for Development of Rest Areas on Major Arterials and Freeways, Third Edition (AASHTO)
18. International Building Code
19. State Fire Marshal Code (NFPA 101)
20. State Plumbing Code
21. Americans with Disabilities Act Accessibility Guidelines (ADAAG)
22. Geotechnical Engineering Services Document